



## **Economic Impact Analysis Virginia Department of Planning and Budget**

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### **18 VAC 15-20 – Asbestos Licensing Regulations Department of Professional and Occupational Regulation September 19, 2005**

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

### **Summary of the Proposed Regulation**

The Board for Asbestos, Lead and Home Inspectors (board) proposes to: 1) list "acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business" as grounds for discipline, 2) list "failure to notify the board in writing within 30 days after any change in address or name" as grounds for discipline, 3) require the asbestos contractor to obtain written acknowledgement from the building owner indicating that the asbestos contractor has provided notification that an asbestos project monitor is required on the asbestos project, 4) clarify that the asbestos project monitor must be on the job site each day that asbestos abatement activities are taking place, 5) clarify that the asbestos training manager notify the board when an accredited asbestos training program will begin on a date other than the start date specified in the original notification and 6) require that notifications and training program participants lists be submitted electronically on forms provided by the board.

## Estimated Economic Impact

Over the years, asbestos has been used in many ways. Pipe insulation, automotive brakes, shingles, wallboard, and blown-in insulation are just a few of the products that once contained asbestos. Although the federal government suspended production of most asbestos products in the early 1970s, installation of these products continued through the late 1970s and even into the early 1980s. Currently, asbestos fibers are at times released during renovations of older buildings.<sup>1</sup>

According to the U.S. Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, “Significant exposure to any type of asbestos will increase the risk of lung cancer, mesothelioma and nonmalignant lung and pleural disorders, including asbestosis, pleural plaques, pleural thickening, and pleural effusions.”<sup>2</sup> These regulations address the licensure of individuals and entities who work with asbestos.

### New grounds for disciplinary action

The board and Department of Professional and Occupational Regulation (department) have seen situations where firms or individuals who having had their license revoked or license application denied, have found others who have not been so disciplined or denied to apply for and become licensed. The individual who had his license revoked or license application denied then directs the operations of the licensee’s business. Since the license was presumably denied or revoked due to incompetence or dishonest or sloppy practice, then the situation where the disciplined individual can effectively operate as licensed despite the denial or revocation minimizes the board and department’s ability to protect the public from the effects of incompetent or dishonest asbestos work.

Consequently, the board proposes to add the following to the list of grounds for disciplinary action: “acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee’s business.” In practice, it may be difficult to prove that a licensee is actually permitting someone else to control their business. Nevertheless, as long as the board does not mistakenly discipline legitimate

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<sup>1</sup> Source: U.S. Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry

<sup>2</sup> U.S. Center for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry, October 10, 2003.

licensees, this proposed amendment has the potential to produce a net benefit for the Commonwealth by reducing the likelihood that dishonest or incompetent individuals can continue to practice and expose the public to unnecessary health and financial risks.

The board also proposes to add “failure to notify the board in writing within 30 days after any change in address or name” as grounds for discipline. The board needs to keep track of licensees’ identity and location in order to monitor their compliance with the regulations. The risk to public health of incompetent or dishonest asbestos abatement work is significant. The cost for licensees of keeping the board informed is small since they can prepare and email notifications in a matter of minutes. Thus, the proposal to allow the board to enforce a requirement that will help enable it to monitor licensees’ compliance with the regulations will likely produce a net benefit.

#### **Notification of required asbestos project monitor**

These regulations require that an asbestos monitor be employed for projects performed in buildings that are occupied or intended to be occupied upon completion of the asbestos project exceeding 260 linear feet or 160 square feet or 35 cubic feet of asbestos-containing material. The board proposes to require asbestos contractors to obtain written acknowledgement from the building owner indicating that the asbestos contractor has provided notification that an asbestos project monitor is required on the asbestos project.

This proposed change will likely provide a net benefit. In practice, some property owners may not be aware of the requirement for asbestos monitors on projects exceeding the minimum size. The property owner could be subject to lawsuits, and the quality of some asbestos abatement work may be reduced if project monitors are not present. Improper or inadequate asbestos abatement could put the public at risk as described above. Thus, the proposed requirement for asbestos contractors to obtain written acknowledgement from the building owner indicating that the asbestos contractor has provided notification that an asbestos project monitor is required on the asbestos project has clear benefits. The cost of compliance for competent, honest contractors is small. One extra line with a signature at the time of contract signing would suffice for compliance with the proposed requirement.

### **Daily presence of asbestos project monitor**

The board proposes to clarify that the asbestos project monitor “shall be on the job site each day that asbestos abatement activities are being conducted ....” The current regulations state that project monitors must “maintain a daily log of all work performed. The daily log shall include, but not be limited to, inspection reports, air sampling data, type of work performed by the contractor, problems encountered and corrective action taken.” According to the department, the board’s intent has always been for the project monitor to be present everyday that asbestos abatement activities are taking place in order to conduct all the duties required for the daily log. The board and department have heard that some individuals have interpreted the current regulations to not necessarily require the daily presence of the project monitor when asbestos abatement work was performed. The department is not aware of whether or not this misapprehension has been widespread. This industry does not have a trade group or association to facilitate communication.<sup>3</sup> The proposed clarification may have some impact for those that misunderstood the intent of the current regulations and intend to comply with the daily presence requirement now that the new language leaves no room for different interpretations. Phone interviews with asbestos project monitors and asbestos project monitor training programs indicated that each additional day of asbestos project monitor work costs from \$250 to \$500.

### **Training manager to notify board**

Under the current regulations, asbestos training providers must notify the board no less than 48 hours prior to conducting an accredited asbestos training program. The board and department use this information to conduct occasional surprise inspections of training sessions to ensure that the training meets legal requirements. According to the department, these inspections have at times found inadequate training.

The board proposes to add what it considers clarifying language. The proposed regulations will specifically require that the training manager notify the board when an accredited asbestos training program will begin on a date other than the start date listed in the original notification within the following specified timeframes. 1) For accredited asbestos training programs beginning prior to the start date provided to the board, an updated notification must be received by the board at least 48 hours before the new start date. 2) For accredited

asbestos training programs beginning after the start date provided to the board, an updated notification must be received by the board at least 48 hours before the start date provided to the board. Also the training manager will be required to update the board of any change in location or cancellation of accredited asbestos training programs at least 48 hours prior to the start date provided to the board. The proposed regulations do specify that the notification requirements shall not apply to circumstances beyond the control of the training provider. For example, the training provider could postpone training with less than 48 hours notice due to sudden instructor illness or unexpected severe weather.<sup>4</sup>

The board considers the proposed language to be clarifications of what is already required. As discussed below, the board also proposes to require that notifications and training program participant lists be submitted electronically on forms provided by the board. Filling out and emailing the board's forms should typically take no longer than 10 minutes according to the department. Thus for those that may have interpreted the current regulations to not require notifications in all the newly specified situations, the proposed requirements to inform the board of changes to the time or place of scheduled accredited asbestos training programs will produce some small costs. Ensuring the board and department's knowledge of where and when asbestos training is taking place is beneficial in that department staff can make surprise inspections to help ensure that asbestos training is adequate. Inadequate training can lead to incompetent asbestos abatement work, which can in turn increase risk to public health. Thus, the proposed notification requirements do produce public benefit. There is insufficient data available to estimate by how much department inspections improve actual training quality, and by how much improved training leads to less incompetent work. Therefore, the reduction in risk to public health cannot be accurately measured. Nevertheless, it seems likely that the benefits of keeping the board and department well-informed of the time and place of training exceed the small costs in training provider staff time to provide change notifications via email.

### **Format of communication**

The board proposes to amend these regulations to state that "Notifications and training program participant lists shall be submitted electronically in the manner established by the board

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<sup>3</sup> Source: Department of Professional and Occupational Regulation

<sup>4</sup> Confirmed by the Department of Professional and Occupational Regulation

specifically to receive this documentation using a sample form designed by and available from the board. Any variation upon this procedure shall be approved by the board prior to submission.” According to the department, those without access to the necessary equipment to submit electronically will be permitted to submit notifications and training program participant lists by alternative means. The proposed standard electronic method of submitting notifications and training program participant lists will enable the department to process the information more rapidly. The saved staff time can thus be used more productively on other work.

## **Businesses and Entities Affected**

The proposed regulations affect the 150 licensed asbestos contractors, 36 accredited asbestos training providers and 279 licensed asbestos monitors in the Commonwealth, as well as owners of property with asbestos.<sup>5</sup> Data are not available to determine what portion of these licensees are associated with small businesses.

## **Localities Particularly Affected**

The proposed regulations affect localities throughout Virginia.

## **Projected Impact on Employment**

Requiring that the asbestos contractor obtain written acknowledgement from the building owner indicating that the asbestos contractor has provided notification that an asbestos project monitor is required on the asbestos project, and clarifying that the asbestos project monitor must be on the job site each day that asbestos abatement activities are taking place may result in some additional employment of asbestos project monitors. The magnitude of the potential increase in employment of asbestos project monitors depends on the frequency that building owners are unaware of the requirements for project monitors prior to notification by contractors, and the relative proportion of those that are aware of the requirements that believe that the current regulations do not require the daily presence of project monitors. The greater the magnitude of owners of buildings containing asbestos that are unaware of the requirements and the greater the relative proportion that misunderstand the current requirement for daily presence, the greater the potential increase in asbestos project monitor employment.

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<sup>5</sup> Numbers of licensed individuals and entities provided by the Department of Professional and Occupational Regulation

## **Effects on the Use and Value of Private Property**

As described above, the proposed amendments may result in some additional employment of asbestos project monitors. The value of businesses offering asbestos project monitoring services will increase commensurately. Property owners who otherwise would have been ignorant of the law concerning the requirement of the daily presence of asbestos project monitors will spend more on asbestos project monitoring services if they wish to comply with the law. Doing so will likely reduce their risk of liability. So the value of the property owners' businesses may or may not decrease in total.

## **Small Businesses: Costs and Other Effects**

The proposed amendments do not produce large additional costs for small businesses that have understood the current regulations. The proposed requirement that asbestos contractors obtain written acknowledgement from the building owner indicating that the contractor has provided notification that an asbestos project monitor is required on the asbestos project will produce a small cost for asbestos contractors. The contractors can meet the proposed notification requirement by adding a line to the contract stating that the contractor has notified the owner of the project monitor requirement. Or alternatively, the contractor could ask the owner to sign a separate piece of paper with the appropriate language. The total cost would essentially be the time and dollar cost of typing and printing one sentence and perhaps one piece of paper per contract.

## **Small Businesses: Alternative Method that Minimizes Adverse Impact**

The proposed regulations essentially do minimize the adverse impact to small businesses given the goals of public safety.